which may flow from such negligence. See *Smith* v. *London & Southwestern Ry. Co.*, L. R. 6 C. P. 14, 21, *per* Channel, B. and Blackburn, J. See Jeremiah Smith, *supra*, 25 HARV. L. REV. 241–246.

SALES — CHATTEL MORTGAGES — TRUST RECEIPT INVALID UNLESS PROPERTY COMES FROM THIRD PARTY. — The bankrupt borrowed money from the petitioner giving a demand note and as security therefor a document purporting to be a trust receipt setting aside certain dolls as the property of the petitioner. This document was not recorded and the dolls remained continuously in the possession of the bankrupt. The receiver having refused to deliver possession of these dolls, the petitioner obtained an order from the District Court directing delivery. *Held*, that the order be reversed. *In re A. E. Fountain, Inc.*, 67 N. Y. L. J. No. 149 (2nd Circ.).

A trust receipt is generically a chattel mortgage. But when properly used, the resulting legal consequences differ materially from those of an ordinary chattel mortgage. *In re Dunlap Carpet Co.*, 206 Fed. 726, 730 (E. D. Pa.); *Moors* v. *Kidder*, 106 N. Y. 32, 44, 12 N. E. 818. See Karl T. Frederick, "The Trust Receipt as Security," 21 COL. L. REV. 395, 403. Where the holder of the trust receipt derives his security title from a party other than the one responsible for the satisfaction of the obligation which the property secures, then for reasons of business necessity and on a balance of conveniences, the courts do not require recording. *In re Cattus*, 183 Fed. 733 (2nd Circ.). See Samuel Williston, "The Progress of the Law, — Sales," 34 HARV. L. REV. 741, 758. But where this salient characteristic of the trust receipt situation is absent, the facts resolve themselves into the ordinary case of a chattel mortgage and peculiar considerations of policy do not apply. *In re Gerstman*, 157 Fed. 549 (2nd Circ.); *In re Shulman*, 206 Fed. 129 (E. D. Pa.). See Karl T. Frederick, *supra*, 21 COL. L. REV. 395, 417, 418. The life of the doctrine of the trust receipt has been short but so far adventurous. This case should serve to warn the business man and the practitioner in search of some method of creating a secret lien, that this device will help them little. If the policy of the law has been relaxed in any way, it has been only within narrow limits. And *cf. Commercial etc. Bank.* v. *Canal Bank.*, 239 U. S. 520.

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY IN NEW YORK. — The vendees assigned the defendant's contract to convey realty, to the plaintiff, who did not assume the burdens of the contract. The Appellate Division reversed a decree of specific performance. *Held*, that the judgment be reversed. *Epstein* v. *Gluckin*, 233 N. Y. 490, 135 N. E. 861.

The earliest New York decision on mutuality required simply mutuality of obligation, that is, consideration. See *German* v. *Machin*, 6 Paige Ch. (N. Y.) 288, 292. Avoiding Fry's extreme theory, the court seemed later to have adopted Pomeroy's view that at the time of a bill there must be mutuality of remedy. *Wadick* v. *Mace*, 191 N. Y. 1, 83 N. E. 571; *Levin* v. *Dietz*, 194 N. Y. 376, 87 N. E. 454. See 5 POMEROY, EQUITY JURISPRUDENCE, 4 ed., § 2191. *Cf.* FRY, SPECIFIC PERFORMANCE OF CONTRACTS, 6 ed., §§ 460–476. The justice these rules were vaguely seeking is served, according to the present opinion, by a requirement that a decree protect the defendant, as well as the plaintiff. See AMES, LECTURES ON LEGAL HISTORY, 370; 3 WILLISTON, CONTRACTS, §§ 1433–1440. See also, William Draper Lewis, "Specific Performance of Contracts — Defense of Lack of Mutuality," 40 AM. L. REV. 270, *et seq.;* Harlan F. Stone, "The 'Mutuality' Rule in New York," 16 COL. L. REV. 443; 23 HARV. L. REV. 294. Under any statement of the mutuality rule, an assignee should

have specific performance if there was originally, between the first parties, mutuality of remedy; and if the assignor was available for suit when the bill was brought. *Cf. Murphy* v. *Marland*, 62 Mass. 575; *Lenman* v. *Jones*, 222 U. S. 51. See FRY, *op. cit.* § 222. Early New York decisions recognized the right of an assignee to specific performance. *Miller* v. *Bear*, 3 Paige Ch. (N. Y.) 465; *Dodge* v. *Miller*, 81 Hun. 102, 30 N. Y. Supp. 726. Recent rulings of the Appellate Division cast doubt on the right. *Genevetz* v. *Feiering*, 136 App. Div. 736, 121 N. Y. Supp. 392; *Dittenfass* v. *Horsley*, 177 App. Div. 143, 163 N. Y. Supp. 626. See *Schuyler* v. *Kirk-Brown Realty Co.*, 193 App. Div. 269, 270–272. See also Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 929, 955. The present decision dispels this doubt. In discarding Fry's and Pomeroy's tests, the New York court adds its weight to that of a growing line of authorities which are making the doctrine of mutuality achieve justice by looking to the substance, instead of defeat justice by sticking in the form of an absolute rule. *Jones & Sons, Ltd.* v. *Tankerville*, [1909] 2 Ch. 440; *Peterson* v. *Chase*, 115 Wis. 239, 91 N. W. 687; *Wright* v. *Suydam*, 72 Wash. 587, 131 Pac. 239. See *Javierre* v. *Central Altagracia*, 217 U. S. 502, 508.

WILLS — LEGACIES AND DEVISES — LAPSED SHARE OF RESIDUE. — Two nieces of the testator, who were named among the seven residuary legatees, predeceased him without issue. Action was brought to determine whether their share of the residue passed to the other residuary legatees or to the next of kin. *Held*, that it fell back into the residue. *Corbett* v. *Skaggs*, 207 Pac. 819 (Kan.).

It has been a long established and universally followed rule that a lapsed or revoked general share of a residuary legatee passes according to the law of intestacy. See 2 ALEXANDER, WILLS, § 764. The reason assigned is usually that that which is already a part of the residue cannot fall back into the residue. *Lyman* v. *Coolidge*, 176 Mass. 7, 56 N. E. 831. It has also been said that the residuary legatees being individuals and not members of a class, take as tenants in common rather than as joint tenants. *Bagwell* v. *Dry*, 1 P. Wms. 700. The rule was formerly applied regardless of the testator's intentions. *Humble* v. *Shore*, 7 Hare 247; *Gorgas' Estate*, 166 Pa. St. 269, 31 Atl. 86. *Cf. Lloyd* v. *Lloyd*, 4 Beav. 231. This is no longer the law of England. *In re Palmer* [1893] 3 Ch. 369. In America a manifest intent will usually take the case out of the rule. *Jackson* v. *Roberts*, 14 Gray (Mass.), 546. Even where there is no expressed intent, because of its tendency to defeat the purpose to die testate, the courts desperately strain to escape the rule. *Waln's Estate*, 156 Pa. St. 194, 23 Atl. 205; *In re Dunster* [1909] 1 Ch. 103; *Aitkin* v. *Sharp*, 115 Atl. 912 (N. J.). The presence of a gift over to the residuary legatee, if only one of four survived, took the case out of the rule although three of the four survived. *In re Radcliffe*, 51 W. R. 409. A statute declaring that realty devised to several be taken in common was held to imply that a joint tenancy existed in personal property. *In re Gamble*, 13 Ont. L. Rep. 299. The rule has been abrogated by statute in three jurisdictions. See 1910 OHIO ANN. GEN. CODE, § 10581 (if legatee be a relative); 1909 R. I. GEN. LAWS, ch. 254, § 7; *Woodward* v. *Congdon*, 34 R. I. 316, 83 Atl. 266; 1920 PA. STAT. § 8325; *Re Jackson*, 28 Pa. Dist. R. 943. One state by decision has rejected the rule. *West* v. *West*, 89 Ind. 529. It is encouraging to find the Kansas court following the progressive minority in a case of first impression.